IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 21ST AUGUST 2007 / 30TH SRAVANA 1929

Bail Appl..No. 5095 of 2007()

CP.84/2007 of J.M.F.C.-II,NEYYATTINKARA

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CRIME NO.30/2007 OF VIZHINJAM POLICE STATION

: PETITIONERS/ACCUSED 1 TO 3

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1. BIJU, S/O.BHASI, DIRECTOR,
THAPOVANAM HERITAGE HOTELS, BINDU NIVAS,
PANAGODE, VENGANOOR.P.O., TRIVANDRUM.

2. SUNIL P.JAMES, S/O.JAMES JOSEPH,
MANAGING DIRECTOR OF THAPOVANAM HERITAGE HOME
PRIVATE LTD., PUTHENPURAIKKAL, KANAMCODE,
KARUKONE, ANCHAL.

3. DILEEP, S/O.KARUNAKARAN NAIR,
GENERAL MANAGER, THAPOVANAM HERITAGE HOTELS,
NEELAMBARI, KRWA-3, KAVALOOR LANE,
VATTIYOORKKAVU.

BY ADV. SRI.SASTHAMANGALAM S. AJITHKUMAR
SRI.SHAJIN S.HAMEED

RESPONDENTS:

THE S.I. OF POLICE, VIZHINJAM POLICE
STATION, REPRESENTED BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 21/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

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B.A. No. 5095 of 2007

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Dated this the 21st day of August, 2007

ORDER

Second application for anticipatory bail. Earlier application was disposed of by another Bench of this Court as per order dated 27.02.07 in B.A.No.479/2007. The petitioners did not take advantage of that order and did not surrender before the Investigating Officer. Investigation is now complete. The petitioners face allegations inter alia under the Kerala Abkari Act. Final report has already been filed. Cognizance has been taken by the committal Court. Committal proceedings has been registered. The petitioners have received summons from the learned Magistrate. The petitioners are willing to appear before the learned Magistrate, but they apprehend that their application for bail may not be considered by the learned Magistrate on merits, in accordance with law and expeditiously. In these circumstances, appropriate directions may be issued under section 438 Cr.P.C and/or 482 Cr.P.C, prays the learned counsel for the petitioners.

2. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that, sufficient and satisfactory reasons

must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

3. It is for the petitioners to appear before the learned Magistrate and seek regular bail in the ordinary course. I have no reason to assume that the learned Magistrate would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioners appear before the learned Magistrate and appliy for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits and expeditiously- on the date of surrender itself. The learned Magistrate must consider all contentions which the petitioner want to urge. Their applications must be considered by the learned Magistrate in the light of the decision in **Sukumari v. State of Kerala (2001 (1) KLT 22).** also.

(R.BASANT, JUDGE)

sj